Date: 20021118
Docket: CR. Am. 181166

IN THE SUPREME COURT OF NOVA SCOTIA
Citation: R. v. Craig, 2002 NSSC 262

BETWEEN:

HER MAJESTY THE QUEEN
Appellant

v.

STEVEN CRAIG
Respondent

APPEAL HEARING

HEARD BEFORE: The Honourable Justice J.E. Scanlan

PLACE HEARD: Amherst, Nova Scotia

DECISION DATE: 18 November 2002

WRITTEN RELEASE OF ORAL DECISION: 02 December 2002

COUNSEL: Ms. Dale Darling, on behalf of the crown

Respondent unrepresented

SCANLAN, J., orally:

[1] By way of background, I note that by application dated December the 4th, 2000, the respondent, Mr. Craig, applied for a firearms possession only license. The chief firearms officer issued a notice of refusal to Mr. Craig dated November the 22nd, 2001. The notice stated that the reason or reasons for refusal were failure to meet the eligibility criteria under section 5 of the *Firearms Act*. In particular, subsection 5(2)(c) "...history of behaviour that includes violence or threatened or attempted violence...against any person", public safety.

[2] Mr. Craig filed an application in the Provincial Court for review of the notice of refusal and that application was dated December the 5th, 2001. Judge Cole of the Provincial Court granted the application and directed that the chief firearms officer issue a license to the respondent in his decision dated April the 3rd, 2002. A notice of appeal of that decision was filed with this Court. The notice of appeal suggests that Judge Cole made several errors of law in his decision.

[3] The first issue that I want to deal with is the standard of review. The standard of review to be exercised by a Provincial Court Judge in reviewing the decision of a firearms officer was set out in *R. v. Pagnotta* [2001] B.C.J. No. 2260, a decision of Judge Dorgan. In that case at paragraph 65 Judge Dorgan concluded, and I quote;

> The test on a reference to the Provincial Court is whether or not the firearms officer's decision was reasonable, and this standard is akin to both "clearly wrong" and "reasonableness simpliciter". The Provincial Court judge may consider evidence that was not before the firearms officer, but the latter need not call evidence to support its original findings unless it is necessary to support its case.

[4] The Supreme Court on this appeal is to determine whether the Provincial Court Judge erred in law in his review. Pursuant to the *Firearms Act* SC (1995) c. 39 proclaimed 1998 eligibility to hold a firearms license is dependent upon determination of the issue of public safety. That's a fairly broad concept. Indeed it's much broader than the considerations that a trial judge may have in mind or may have to take into account when sentencing an accused person after conviction. A license applicant, such as Mr. Craig in this case, is investigated by a designated firearms officer and he reports to the chief firearms officer. If the chief firearms officer concludes, as a result of investigation, that it's not in the interest of public safety for the applicant

to hold a license, the applicant is not eligible, and the chief firearms officer will refuse to issue the license.

[5] Sections 4, 5 and 6 of the *Firearms Act* outline the purpose of the *Act* and the criteria for granting of licenses. I refer in part to those sections; section 5(1):

> A person is not eligible to hold a license if it is desirable, in the interests of safety of that or any other person, that the person not possess a firearm...

I refer to subsection (2) of that same section and quote;

> In determining whether a person is eligible to hold a license under subsection (1), a chief firearms officer...shall have regard to whether the person, within the previous five years...
>
> (a) has been convicted or discharged under section 730 of the *Criminal Code* of
>
> (i) an offence in the commission of which violence against another person was used, threatened or attempted...
>
> (c) has a history of behaviour that includes violence or threatened or attempted violence on the part of the person against any person.

[6] I note that the Provincial Court Judge, pursuant to section 75 and 76 of the *Act*, is the correct official to review decision of the chief firearms officer. And I refer specifically to section 75(3) which says that;

> At the hearing of the reference, the burden of proof is on the applicant or the holder to satisfy the provincial court judge that the refusal to issue...was not justified.

I point out to you, Mr. Craig, and to others that indeed there is a burden placed upon the person requesting the license and appealing to the Provincial Court Judge to show that a refusal to issue a license was not justified.

[7] The evidence before the Provincial Court Judge included a report as filed by Mr. Teed, and it stated in part;

> Police files were reviewed and it was noted that no weapons were used in the commission of the sexual related offences; however, the fact remains that

> intimidation by an adult or perceived person in authority was exercised by the applicant upon young females aged between 10 and 15 years of age. Sexual assertion by an adult upon a young person in any form is in itself a crime of violence.

Mr. Teed's reports show that Mr. Craig had been convicted of a section 266 assault charge in 2001, convicted of a section 271(1)(a) sexual assault charge involving young females between the age of ten and fifteen, and he has other sexual related convictions. Also in 1998 the police responded to a domestic situation in which no charge was laid.

[8] In his decision the Provincial Court Judge stated in part;

> He's (the respondent) been convicted of assault and other crimes of violence being sexual related matters - but not violence in the sense of using knives, firearms, threats to use the same or anything else...

And he continues later on saying;

> Everybody has their definition of violence. I had one witness on the stand recently who said, and this had to do with domestic matters, jealousy is violence.

[9] In reviewing Judge Cole's decision, it's clear that he did not accept that an assault or sexual assault offences are inherently violent offences. I do not accept that position as taken by Judge Cole. I'm satisfied that pursuant to the terms of this legislation, a firearms officer is entitled to look at the past history of an applicant who is applying for a firearms registration or possession license, to determine whether or not, based on past actions, the person presents a threat to public safety or individuals around them. As I have indicated, I do not accept the opinion of Judge Cole in terms of his categorization of the offences as being non-violent in nature simply because they did not involve firearms, knives or other weapons. In this court I and many other judges have noted repeatedly in sexual offences that those crimes are inherently violent in nature. In both criminal and civil context, the definition of assault contemplates the actual application of force or the threat of force. Sexual assaults are part of the history of behaviour that include violence or threatened violence against another person. I am satisfied those offences do fall within the definition of actions which may be considered as part of section 5(2)(c) of the firearms legislation.

[10] A firearms officer, chief firearms officer, or an investigating officer may well conclude, after looking at the specifics of the offence, that even though

there were prior convictions they're not satisfied that the person continues to be a threat to society or to the public safety. Having said that I must say that it would not be unreasonable for an investigating officer to conclude that because of the nature of those offences and the disregard for the victims involved, people who commit offences may not be people who society says should be entitled to the privilege of possessing firearms. It would not be unreasonable for a chief firearms officer to conclude that a person who disregarded the integrity of victims in crimes of assault or sexual assault are a danger to public safety. It would be highly inappropriate for courts to require use of a weapon in the commission of those offences before recognizing the inherent violence of such offences. As I noted earlier, I am satisfied they are inherently violent offences whether a weapon has been used or not.

[11] It's a matter of the investigating officer and the chief firearms officer making a reasoned decision based on their investigation as to whether or not the person does, because of past activities, present a danger.

[12] I'm satisfied that the Provincial Court Judge did err at law by not asking himself the right question on the review. The question that he should have asked and which he did not ask was whether or not the decision of the chief firearms officer was reasonable, taking into account Mr. Craig's history of criminal convictions including assault and sexual assault. The Provincial Court Judge appears to have reversed the chief firearms officer's decision by substituting his own opinion that sexual assault does not constitute a crime of violence. That question should have been whether or not it was reasonable for the chief firearms officer to arrive at the conclusion that he did.

[13] I noted earlier that the burden is on the applicant at the Provincial Court hearing. I am satisfied the respondent could not meet the burden of showing the chief firearms officer's decision was unreasonable. The decision of the chief firearms officer should be confirmed. The appeal is allowed, and the decision of the firearms officer is restored.

J.